

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NAMORAH BYRD, JUBAWAS BYRD, :
AWANJU BYRD-TENNYSON, :
DARASE A/K/A/ WILLIAM BYRD, :
MARBARI A/K/A/ RAYMOND BYRD, :
MINGO BYRD, AND JEROME BYRD :
PLAINTIFFS, :

CIVIL ACTION

v.

NO. 96-0070

MICHAEL F. DUFFY, :
MICHAEL J. DUFFY, GERARD DUFFY, :
JOE SCULLIN, JOHN/JOHNNIE/ :
JONATHAN/JOE/JACK/ JANE DOE, :
members of the Philadelphia Police :
Dept. tactical teams involved in the raid :
upon 's house at 3754 N. 15th :
Street, Philadelphia, Pa 19140 on :
12/5/93, JANE DOE, officer, :
Commanding/Supervising Officers who :
coordinated investigation and execution :
of the raid on 's home on :
12/5/93 in official and individual :
capacities, :
DEFENDANTS :
and :
CITY OF PHILADELPHIA and :
BELL ATLANTIC-PENNSYLVANIA, INC.:
RESPONDENTS. :

MEMORANDUM-ORDER

Presently before the Court is Plaintiffs' uncontested Motion for Court Approval of a Settlement Including Minors. In their Motion, Plaintiffs seek Court approval for the settlement of all claims against Defendant City of Philadelphia and Defendant Bell

Atlantic - Pennsylvania, Inc. ("Bell Atlantic"). For the following reasons, the Motion for Approval of Settlement will be granted.

I. Background

Five adult and two minor plaintiffs filed an action against both defendants in the Philadelphia Court of Common Pleas on December 4, 1995. The case was subsequently removed to the District Court for the Eastern District of Pennsylvania on January 4, 1996. In February 1997, the plaintiffs filed a complaint alleging that Defendant Bell Atlantic negligently provided their address and telephone number to City of Philadelphia Police Officers during a kidnaping investigation. The complaint also alleged, inter alia, that various Philadelphia law enforcement officers, acting upon information provided by Bell Atlantic, conducted an illegal search in violation of the Fourth and Fourteenth Amendments of the U.S. Constitution and other state laws. As a result of that search, the two minor plaintiffs allege that they suffered psychological injuries. The adult plaintiffs have not set forth their alleged injuries, if any, in the motion presently before this Court.

II. The Settlement

After Defendant Bell Atlantic filed a motion for summary judgment before this Court, the parties settled all of the plaintiffs' claims against Bell Atlantic for a sum of fifty thousand dollars. This Court subsequently dismissed the motion for summary judgment as moot. The Court later granted the remaining Defendants' motion for summary judgment and subsequently entered judgment in their favor on December 18, 1998. The City of Philadelphia later entered into an agreement whereby it would pay

two thousand dollars to settle all of the plaintiffs' claims against it.

The parties now seek approval of a total gross settlement of fifty-two thousand dollars. Pursuant to the agreement, the gross settlement will be divided among the seven plaintiffs as follows: 30 percent distributed to each of the two minor plaintiffs; 20 percent to Namorah Byrd; and 5 percent to each of the four remaining adult plaintiffs.¹

The following costs will be subtracted from the gross settlement amount:

Attorney fees	
- 40 percent of the adults'	
net recovery	\$ 7,597.13
- one-third of minors'	
net recovery	\$ 9,495.46
Expert fees	\$ 1,750.00
Medical Reports	\$ 31.84
Court Reporting/Transcripts	\$ 2,736.10
Total	<u>\$ 21,610.53</u>

The net recovery for each of the plaintiffs will be paid based on the percentages identified above. Consequently, each minor plaintiff will receive \$ 9,496.89 after costs and attorney's fees. The agreement requires that the parties place the net recovery of the two minor plaintiffs in restricted certificates of deposit from federally insured banks or savings institutions having an office in Philadelphia County until they both reach

¹

Gross Recovery Before Costs

MINOR PLAINTIFFS

Darase a/k/a/ William Byrd	\$ 15, 600.00
Marbari a/k/a/ Raymond Byrd	\$ 15, 600.00

ADULT PLAINTIFFS

Namorah	\$ 10, 400.00
Jerome	\$ 2,600.00
Awanju	\$ 2,600.00
Jubawase	\$ 2,600.00
Mingo	\$ 2,600.00

majority (age 18) on April 16, 2002. The funds will be restricted by a provision directing that the funds are: “not to be redeemed except for renewal in its entirety; not to be withdrawn, assigned, negotiated, or otherwise alienated before the minor attains majority, except upon prior Order of the Court.”

III. DISCUSSION

Pursuant to 42 Pa.R.Civ. P. 2039(a), the Court must approve any settlement of an action involving state claims brought on behalf of a minor plaintiff. Similarly, the judges of the United States District Court for the Eastern District of Pennsylvania recently approved a new rule, to be added to the Local Rules of Civil Procedure, which closely resembles 42 Pa.R.Civ.P 2039.² Rules of this nature serve to protect the interests of minors in all phases of litigation. See Power by Power v. Tomarchio, ____ Pa.Super. ___, 701 A.2d 1371,1373 (1997) Thus, when evaluating a petition for approval of a settlement agreement involving minor plaintiffs, the Court must examine whether entry into the settlement agreement is in the best interests of the minor plaintiff. Id. at 1374.

² The proposed new rule reads as follows:

Minors, Incapacitated Persons, and Decedents' Estates

- (a) No claim of a minor, incapacitated person, or decedent's estate shall be compromised, settled, or dismissed unless approved by the court.
- (b) No distribution of proceeds shall be made out of any fund obtained for a minor, incapacitated person, or decedent's estate as a result of a compromise, settlement, dismissal, or judgement unless approved by the court.
- (c) No counsel fee, costs, or expenses shall be paid out of any fund obtained for a minor, incapacitated person, or decent's estate as a result of a compromise, settlement, dismissal, or judgment unless approved by the court.

A. Best Interests of the Minor Plaintiffs

On December 3, 1993, the two minor plaintiffs sustained psychological injuries resulting from the alleged actions of the defendants in this case. (Pls.' Mot. for Approval of Settlement at 4). Counsel for the plaintiffs asserts that the injuries of the two minors "are totally psychological" and although they are still ongoing, "the injuries are less severe than they were initially." (Pls.' Mot. for Approval of Settlement at 4-5). Nevertheless, counsel for the plaintiffs relies upon recent physical examinations performed by Dr. John A. Heydt on January 18, 1999, to show that each of the two minor plaintiffs are in excellent mental, physical and emotional health. (Pls.' Mot. at App. A).

Counsel for the plaintiffs further opines that the minor plaintiffs are better served under this settlement agreement, whereby they will receive 60 percent of the total recovery, rather than risk the possibility of a lesser recovery in Court proceedings against the Defendants. He also argues that the settlement set forth in the agreement will afford the minor plaintiffs an opportunity to finance their college educations and possibly seek "better professional help" if required. (Pls.' Mot. for Approval of Settlement at 5).

The Court notes that the parties are typically in a good position to evaluate the settlement agreement. In the instant case, both counsel for the plaintiffs and the minor plaintiffs' parents have recommended approval of this settlement. Moreover, the minor plaintiffs are more likely to benefit from receiving 60 percent of the net recovery in this settlement agreement rather than risk recovering a lesser amount in a court proceeding. Taking all of these factors into consideration, this Court finds that the settlement

agreement in the instant case is in the best interests of these two minor plaintiffs.

B. Attorney's Fees

The Pennsylvania Rules of Civil Procedure gives the Court broad discretion in setting counsel fees in cases involving minors. See 42 Pa.R.Civ.P. 2039(b)³. Factors to consider in making this determination include, but are not limited to, the amount of work performed, the character of services rendered, difficulty of performance of litigation, the amount of money in question, and the client's ability to pay. Shaw by Ingram v. Bradley, 448 Pa.Super. 506, 672 A.2d 331 (1996). In the instant matter, the parties have agreed that a one-third contingency fee will apply to the net recovery of the minor plaintiffs. This fee appears to be reasonable in light of counsel's work in defense of motions to dismiss, motions for summary judgment, and other litigation activities performed for the plaintiffs. Therefore, the Court finds that the fee of \$ 9,495.46, which represents one-third of the net recovery of both minor plaintiffs, is a reasonable attorney's fee for the instant case.

Thus, having found the settlement to be in the best interests of the minor plaintiffs, and the attorney's fees reasonable, the Court will grant the motion for approval of the settlement involving minor plaintiffs. An appropriate Order follows.

³Rule 2039(b) provides in pertinent part:

When a compromise of settlement has been so approved by the court, . . . the court shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise . . . 42 Pa.R.Civ. P. 2039(b).